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City lawsuit tab at \$1.5M, and counting

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A lawsuit filed against the city of Billings three years ago by a local attorney who claimed that he was harassed and defamed by city employees has already racked up costs of nearly \$1.5 million, and it hasn't even been set for trial.

The city is not directly paying for the legal defense, but the municipal insurance pool that is handling the case reports that claims as of late October amounted to \$1,489,039.

Bob Worthington, the chief executive officer of the Montana Municipal Insurance Authority, said the MMIA has paid out larger sums in personal injury cases, but "these are the most significant dollars in legal fees" the authority has had to cover in its 20-year history.

The case began five years ago as a misdemeanor domestic disturbance call and mushroomed into a multimillion-dollar lawsuit involving allegations of conspiracy, evidence tampering and false arrest, among many other charges.

The suit was filed in District Court in September 2003 by William D'Alton, an attorney with the Brown Law Firm, who claimed that his ex-wife, then an employee of the City Attorney's Office, and seven other employees of that office and the Police Department conspired to have him falsely accused and arrested. He is seeking \$2.4 million in damages.

After his ex-wife, Moira Murphy D'Alton, was later fired from the City Attorney's Office, she filed her own lawsuit against the city, claiming that she had been wrongfully terminated and subjected to civil rights violations. That case is still active in District Court, though Moira D'Alton's attorney, Rob Stephens, said "it is moving at a snail's pace."

As of the end of October, the MMIA had spent \$41,653 defending the city in that suit. Moira D'Alton filed a second claim with the Montana Human Rights Bureau, accusing the city of hostile gender discrimination and other work-related violations. After conducting an investigation, the bureau determined that the allegations were unsubstantiated.

The ruling was not appealed and the case file has been closed by the MMIA. That case ended up costing the MMIA \$20,990.

Through the end of October, then, the city's insurance company has spent a little more than \$1.55 million on legal fees in the dueling D'Alton cases, with the vast majority of fees expended on the suit filed by William D'Alton.

Why has that case been so expensive? The fundamental reason is that it involved so many defendants and claims. The case, which was transferred to U.S. District Court less than a month after it was filed in state District Court in the fall of 2003, originally included 10 claims against nine defendants. The defendants asked to have the case transferred to U.S. District Court because it involved questions of federal law.

The defendants were the city of Billings, Moira D'Alton, City Attorney Brent Brooks, Deputy City Attorney Stacey Tenney and Billings police officers Bob Nyquist, Jim Woog, John Bedford, Joel Watson and Dan Walters.

t starts with a police call

The case began on Nov. 3, 2001, when police were called to the D'Altons' house by Moira D'Alton. William D'Alton was arrested after his wife told police he threw a phone at her, hitting her in the face.

The misdemeanor domestic assault charge was dismissed after a trial in August 2002, and a Municipal Court judge scolded police officers for their handling of the case. The judge also criticized Moira D'Alton and the city for destroying key evidence, including e-mails that Moira D'Alton deleted from her office computer.

In September 2003, William D'Alton sued the city and the eight city employees. In his suit, he claimed that his former wife - they were divorced in 2002 - used her close connections with the City Attorney's Office and Police Department to have him falsely accused and arrested.

He said there was evidence that Moira D'Alton was having an affair with a police officer and used her connections to have her husband threatened with a beating by officers. William D'Alton also said his wife had been planning, before the arrest, to seek a divorce and hoped to use the allegations of domestic abuse "to obtain the upper hand" in divorce proceedings.

William D'Alton listed additional incidents of harassment on the part of police officers, including one case in which officers Walters and Woog supposedly came to his house and warned him to stop calling his wife and to stop accusing her of having an affair with a police officer.

The lawsuit accused Tenney, a city prosecutor "and best friend of Moira's," of calling the city-county dispatch center the day after the arrest and trying to obtain the tape of Moira D'Alton's call to the police.

Claims leveled against other defendants in the original suit included charges of negligence, civil rights violations, destruction of evidence, civil conspiracy, false imprisonment, defamation, infliction of emotional distress and malicious prosecution.

Lots of lawyers

The case was turned over to the MMIA because of the obvious conflicts involved in a case naming two employees of the City Attorney's Office and other city employees. Eventually, 12 attorneys from seven law firms in Billings, Bozeman, Helena, Great Falls, Missoula and Butte were hired to represent all the defendants.

The attorneys for the city of Billings were Harlan Krogh and Gerry Fagan of the Billings law firm of Moulton, Bellingham, Longo and Mather. Krogh said a large part of the expense simply resulted from the large number of lawyers.

Krogh said the case entailed 17 police calls that the D'Altons were involved in, which meant there were 17 separate incidents with many witnesses. He said defense lawyers ended up taking 38 depositions and

conducting about 40 interviews that were not depositions.

Because many of the depositions dealt with allegations involving more than one of the defendants, at times there were six defense attorneys present for a single deposition, in addition to the plaintiff's lawyers and a court reporter. A typical deposition might take two to four hours, Krogh said.

Forthington, with the MMIA, said Krogh's law firm billed at a rate of \$130 an hour. He said fees charged by other defense attorneys in the case ranged from \$115 to \$145 an hour.

There is also an unusually large number of documents attached to the case.

"I'd conservatively say we looked at over 15,000 documents," Krogh said. "... I think we have produced over 2,000 ourselves, in terms of e-mails, policies, investigative reports and things like that."

It was expensive to retrieve some of those documents, particularly the missing e-mails. When the case started, Krogh said, it was thought that the deleted messages could not be retrieved. Later, the defense lawyers learned that backup tapes did exist. To extract the e-mails, however, required the services of a computer research team from Seattle and the building of a new computer server.

On top of that, finding the right e-mails meant sorting through thousands of messages and determining which ones were pertinent, what privacy issues were involved and which messages included the names of people not connected with the suit. All that work added up to a lot of time and money, Krogh said.

The case file grew steadily over the years. As of Oct. 31, the federal court docket listed 659 filings.

"It's a large case, and it's taken a lot of effort to defend it," Krogh said. "There are many, many issues of law."

Even so, the lead attorney for William D'Alton, Brian Gallik of the Bozeman law firm of Goetz, Gallik and Baldwin, said he was stunned to hear that defense costs had risen to \$1.5 million so far.

"I'm shocked at the costs, at the amount of fees billed in this case," he said.

But his client hasn't exactly gotten off cheaply. Krogh said D'Alton estimated his attorney fees at \$275,000 during a deposition taken in July 2005. Krogh also said that much of the work D'Alton's attorneys did for him came after that date, so his costs are "probably significantly higher."

Gallik wouldn't say what D'Alton's costs are to date, but he did say in an e-mail that the fees are more than \$1 million less than the defense fees.

The case is so complicated and so many issues are in dispute that Krogh and Gallik don't even agree on the nature of the claims that are still outstanding. What is not disputed is that three of the original defendants have been dismissed from the suit. There are no claims against officers Woog and Walters, but Gallik said the court ruled "that the conduct of Woog and Walters is admissible as contextual evidence of a conspiracy against Mr. D'Alton."

Krogh didn't dispute that characterization. Nor did he dispute Gallik's statement that City Attorney Brooks was dismissed from the suit on the basis that he has absolute immunity, because of his position as a state prosecutor, "for his actions or inactions in failing to secure computer evidence and failing to produce ... exculpatory evidence to Mr. D'Alton."

D'Alton's lawsuit still includes six claims against the city of Billings. Though Krogh takes issue with details of

Gallik's description of the claims, they are basically these: negligence, emotional distress, false arrest, false imprisonment, civil conspiracy and defamation.

Gallik said there are six outstanding claims against Moira D'Alton: conspiracy, defamation, negligence, infliction of emotional distress, punitive damages and unspecified violations of the Montana Constitution and federal law.

Krogh said the remaining claims against Moira D'Alton "are allegations of conduct that we believe were NOT done in the course and scope of her employment so the City would not be liable for her conduct. Bill would be seeking a personal judgment against his ex-wife."

Gallik said there are four remaining claims against Tenney: conspiracy, negligence, infliction of emotional distress and punitive damages. Krogh responded: "She is being sued for sending a copy of the criminal file to Moira's divorce attorney. She sent the same file to Bill's attorney as well. That is the only basis upon which she is being sued. All other theories were dismissed by the Court."

The four remaining claims against officers Watson, Nyquist and Bedford are false arrest, false imprisonment, conspiracy and punitive damages.

The case was supposed to go to trial at the end of this month, but Gallik was also serving as co-counsel for one of the defendants in the government's case against W.R. Grace & Co., which had been scheduled for trial starting Sept. 11. Because that trial was expected to be lengthy, Gallik asked the judge in the D'Alton case, J.S. Magistrate Richard Anderson, for a continuance.

That was granted, but just before the W.R. Grace trial was to begin, it was indefinitely delayed by an appeal from the prosecution. By then, Anderson's calendar was full and he couldn't reschedule the D'Alton case. Gallik said Anderson, who plans to retire at the end of the year, decided that scheduling a new trial date will have to be left to his successor.

Paying the premium

As expensive as the case has been so far, it probably won't have much effect on the city's insurance costs, Worthington said. The MMIA operates as an interlocal governmental agency. Its 122 members consist of most of the incorporated cities and towns in Montana. The MMIA was formed in 1986 in response to an insurance crisis that saw many municipalities either losing their liability insurance or seeing their premiums increased dramatically.

Premiums for each member municipality are adjusted annually based on claims history, size and other factors. Any large claim is going to have some effect on premiums, Worthington said, but he couldn't quantify what effect one specific case would have on a city as large as Billings.

City Administrator Tina Volek said the city's insurance premium for this fiscal year, which began July 1, was \$1.3 million, which was actually down from the premium of \$1.4 million it paid the MMIA in the previous year. In fiscal year 2005 the premium was just over \$1 million, and in 2004 it was \$805,627, she said.

Under the city's policy with the MMIA, the city pays the first \$25,000 of any claim, after which the MMIA's coverage kicks in at 100 percent. Pat Weber, the city controller, said the city has a separate fund to pay for the deductibles up to \$25,000 and generally spends \$300,000 to \$400,000 a year for that purpose.

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